

EXHIBIT 1

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
CIVIL UNLIMITED

DOMINIC COBARRUVIAZ,
Individually and On Behalf of All Others
Similarly Situated Employees,

Plaintiffs,

vs.

MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 THROUGH 100, inclusive,

Defendants.

No. [Unassigned]

CLASS ACTION COMPLAINT FOR
DAMAGES [C.C.P. § 382] AND
DEMAND FOR JURY TRIAL

COMPLAINT FOR VIOLATIONS OF:

1. Violation of Lab. Code § 216
2. Violation of Lab. Code §§ 204, 510, 1194, 1198
3. Violation of Lab. Code §§ 226, 1174
4. Violation of Lab. Code §§ 224, 2802
5. Violation of Lab. Code § 2699
6. Violation of Bus. & Prof. Code § 17200
7. Fraud/Intentional Misrepresentation

AMOUNT EXCEEDS \$75,000

FILED
Superior Court of California
County of San Francisco

JAN 09 2015

CLERK OF THE COURT
Superior Court of California, County of San Francisco
M.A. MORAN
DEPUTY CLERK

CGC - 15 - 543583

1 Plaintiff, DOMINIC COBARRUVIAZ ("Cobarruviaz"), on behalf of himself and
2 all others similarly situated ("Plaintiffs"), brings this action against Defendants
3 MAPLEBEAR, INC., doing business as INSTACART ("Instacart"), and Does 1 through
4 100 (collectively "Defendants"), and allege, upon information and belief, except as to his
5 own actions, the investigation of his counsel, and the facts that are a matter of public
6 record, as follows:

7 1. Plaintiff Cobarruviaz brings this action to obtain damages and restitution, as well
8 as injunctive and other relief, individually and on behalf of a proposed class defined
9 below ("Class").

10 2. As alleged herein, Plaintiffs are drivers and delivery persons who were improperly
11 misclassified as independent contractors and required to pay business-related expenses
12 while in the employ of Defendants. Defendants intentionally misrepresented to Plaintiffs
13 that they were not entitled to wages for non-productive time, reimbursements for expenses
14 incurred in relation to their employment, workers' compensation insurance benefits, and
15 tax benefits enjoyed by employees.

16 3. Plaintiffs assert claims individually and collectively under the Labor Code §§ 204,
17 216, 224, 226, 510, 1174, 1194, 1198, 2699, and 2802; the Business & Professions Code
18 § 17200; and for fraud/intentional misrepresentation.

19 4. Plaintiffs seek actual and/or compensatory damages, civil penalties, restitution,
20 equitable relief, costs and expenses of litigation, including attorneys' fees, and all
21 additional and further relief that may be available and that the Court may deem
22 appropriate and just under all of the circumstances.

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JURISDICTION AND VENUE

5. This class action is brought pursuant to Section 382 of the California Code of Civil Procedure and seeks to remedy Defendants' violations of state law, including the Labor Code, UCL, and orders promulgated by the Industrial Welfare Commission ("IWC" or "IWC Orders"), arising from and related to Defendants' misclassification, unpaid workers' compensation insurance, unpaid tax contributions, unreimbursed expenses, and related misconduct in relation to Plaintiffs' employment.

6. Venue is proper in this Court because, inter alia, Defendants are headquartered in and engage and perform business activities in and throughout San Francisco County. Plaintiffs regularly performed work in San Francisco County, many of Defendants' services involve San Francisco County residents, and many of the acts complained of herein occurred in this judicial district.

PARTIES

7. Plaintiff Cobarruviaz is, and at all times relevant herein was, a resident of San Francisco, California. Defendants continuously employed Cobarruviaz as a driver and delivery person since January 2014. During the course of his employment by Defendants, Cobarruviaz incurred expenses related to his work, including vehicle maintenance, fuel, insurance, and other driving related expenses, for which he was not reimbursed.

8. Defendant Instacart is a California corporation with its principal place of business located at 92 S. Park Street in San Francisco, California. Instacart maintains substantial ongoing business operations throughout the United States, including San Francisco County, and is in the business of providing online grocery shopping and delivery service.

9. The true names and capacities of DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue such Defendants by use of such fictitious names. Plaintiffs will amend this complaint to add the true names when they are ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is legally responsible for the occurrences herein alleged, and that Plaintiffs' damages as herein alleged were proximately caused by their conduct.

CLASS ACTION ALLEGATIONS

10. Plaintiffs bring this action as a class action pursuant to Code of Civil Procedure, Section 382, on behalf of themselves and the following Class:

All persons who performed grocery delivery work anywhere in the United States for or on behalf of one or more of the Defendants from January 1, 2012 to the present.

Plaintiffs reserve the right to amend this Class definition if discovery and/or further investigation demonstrate that the Class should be expanded or otherwise modified.

11. The members of the Class are so numerous that joinder of all members would be impracticable.

12. There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including:

- a. Whether class member have been required to follow uniform procedures and policies regarding their work for Instacart;
- b. Whether the work performed by class members—providing grocery delivery service to customers—is within Instacart's usual course of business, and whether such service is fully integrated into Instacart's business;
- c. Whether Defendants failed to pay Plaintiffs for all hours of work performed in violation of California law;
- d. Whether Defendants failed to reimburse Plaintiffs for expenses incurred during the course of their employment;
- e. Whether Defendants' conduct violates the Labor Code;
- f. Whether Defendants' conduct violates Section 17200 of the Business and Professions Code;
- g. Whether Defendants' conduct otherwise violates California law; and
- h. Whether, as a result of Defendants' misconduct, Plaintiffs are entitled to

1 damages, restitution, equitable relief and/or other damages and relief, and, if so, the
2 amount and nature of such relief.

3 13. Plaintiff Cobarruviaz's claims are typical of the claims of the members of the
4 Class. Cobarruviaz has no interests antagonistic to those of the Class and is not subject to
5 any unique defenses.

6 14. Plaintiff Cobarruviaz will fairly and adequately protect the interests of all members
7 of the Class and have retained attorneys experienced in class action and complex
8 litigation.

9 15. A class action is superior to all other available methods for the fair and efficient
10 adjudication of this controversy for, inter alia, the following reasons:

11 a. It is economically impractical for members of the Class to prosecute
12 individual actions;

13 b. The Class is readily definable;

14 c. Prosecution as a class action will eliminate the possibility of repetitious
15 litigation; and

16 d. A class action will enable claims to be handled in an orderly and
17 expeditious manner, will save time and expense, and will ensure uniformity of
18 decisions.

19 16. Plaintiffs do not anticipate any difficulty in the management of this litigation.

20 **FACTUAL ALLEGATIONS**

21 17. Instacart provides grocery delivery services in cities throughout the country via an
22 on-demand dispatch system.

23 18. Instacart offers customers the ability to purchase groceries from specified stores on
24 a mobile phone application or over the Internet and have them delivered by "personal
25 shoppers" within one or two hours.

26 19. Instacart's website advertised that "Instacart is a grocery delivery service that
27 delivers in a little as an hour!"
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20. At all times during their employment with Defendants, Plaintiffs were misclassified as independent contractors by Defendants, were in fact employees of Defendants, and suffered actual economic harm as a consequence of this misclassification.

21. At all relevant times, Defendants issued Plaintiffs Form 1099s, indicating Plaintiffs were independent contractors and were not Defendants' employees.

22. Despite Defendants' explicit and implicit classification of Plaintiffs as independent contractors, Plaintiffs were in fact employees of Defendants. Plaintiffs were required to follow a litany of detailed requirements imposed on them by Instacart and they were graded and subject to termination based on their failure to adhere to these requirements.

23. At all relevant times, Defendants exerted control over Plaintiffs in a manner consistent with an employer-employee relationship, including but not limited to, generating the work orders for Plaintiffs; controlling their wages; enforcing behavioral codes of conduct; controlling the means, manner, and method by which they perform their work; and controlling the conditions of employment.

24. At all relevant times, Defendants directed Plaintiffs precisely when and where they were to collect and deliver groceries to Instacart customers, how they were to interact with Instacart customers, required them to wear clothing and use accessories bearing the Instacart insignia, directed them as to how they were to maintain their vehicles, and terminated them from Instacart's employment at Instacart's discretion.

25. As a prerequisite to being hired as an Instacart delivery driver, Plaintiffs had to undergo training by Instacart regarding how to perform their duties. Instacart required further training if Plaintiffs were going to be delivering alcohol as part of a work order.

26. At all relevant times, Plaintiffs were assigned their work by Defendants, through its dispatchers, on a daily basis. On a typical workday, Plaintiffs received text messages from Defendants directing Plaintiffs what items they were to collect for Instacart customers, the specific grocery store and exact store location where they were to collect these items, and when and to where they were to deliver the items to Instacart customers.

1 Instacart even directs Plaintiffs as to the specific driving route they are to take from the
2 grocery store to the Instacart customer's delivery address. Plaintiffs did not have any role
3 or discretion in determining the manner of executing their duties, the timing or scope of
4 their work, or price to be charged for the work performed.

5 27. At all relevant times, Plaintiffs received their assigned jobs on a daily basis from
6 Defendants and, as a result, they did not know where they were to be assigned to work,
7 the type of deliveries they were to be performing, or the length of time any given
8 assignment was expected to require until they received Defendant's work order text
9 message. Plaintiffs were not permitted to collect the materials from locations of their
10 choosing or deliver them at a time or a price negotiated by Plaintiffs.

11 28. Furthermore, Instacart is in the business of providing grocery delivery service to
12 customers, and that is the service that Instacart drivers provide. The drivers' services are
13 fully integrated into Instacart's business, and without the drivers, Instacart's business
14 would not exist.

15 29. However, at all relevant times, Defendants treated Plaintiffs like independent
16 contractors to the detriment of Plaintiffs in various manners, including but not limited to,
17 requiring Plaintiffs to use their own vehicles to make deliveries, pay for driving-related
18 expenses, refusing to provide liability insurance for the operation of Plaintiffs' motor
19 vehicles, refusing to provide workers' compensation insurance, and requiring Plaintiffs to
20 pay increased tax rates mandatory for independent contractors. Additionally, Defendants
21 required Plaintiffs to use their own smart phones and data from their personal cell phone
22 service plans in order to receive and carry out work orders.

23 30. By misclassifying Plaintiffs as independent contractors, Defendants were able to
24 avoid the significant responsibilities associated with the employer/employee relationship,
25 including, inter alia, the payment of wages for non-productive time, expense
26 reimbursements, provision of workers' compensation insurance, payment of state and
27 federal taxes, and other benefits.

28 31. At all relevant times, Plaintiffs were paid in a manner completely dependent on the

1 nature of the deliveries they made, including the quantity of items Plaintiffs were required
2 to collect and deliver under each individual work order. Plaintiffs were required to make
3 themselves available to perform work within a predetermined range of time each day, but
4 were not compensated in a manner that guaranteed they were compensated at or above the
5 applicable minimum wage during those hours. During non-productive time, or time
6 during which Plaintiffs were required to make themselves available for work but were not
7 given an assignment, Plaintiffs were not compensated in any manner whatsoever.

8 32. Shifts for Plaintiffs could last up to ten (10) hours but Plaintiffs were not
9 compensated at the required overtime rates for the time worked over eight (8) hours.

10 33. Plaintiffs were required to bear many of the expenses of their employment,
11 including expenses for their vehicles, gas, and other expenses. California law requires
12 employers to reimburse employees for such expenses, which are for the benefit of the
13 employer and are necessary for the employees to perform their jobs.

14 34. At all relevant times, Defendants required Plaintiffs to use and maintain insured
15 and licensed vehicles as a condition of their work. Plaintiffs were required to pay all
16 expenses related to the use and maintenance of their vehicles, including expenses related
17 to liability insurance, fuel, routine maintenance, and the upkeep of their vehicles'
18 appearance. Defendants also required Plaintiffs to use their own smart phones and data
19 from their personal cell phone service plans as a condition of their work in order to
20 receive and carry out work orders. Defendants did not reimburse Plaintiffs for these
21 work-related expenses in any manner.

22 35. At all relevant times, Defendants did not provide Plaintiffs with workers'
23 compensation insurance. Plaintiffs injured in the course and scope of their employment
24 with Defendants were left to rely on either their own private medical insurance or make
25 direct payments for medical treatment rendered as a result of industrial injuries. Plaintiffs
26 were additionally ineligible for workers' compensation disability benefits if they were
27 physically unable to perform their work as a consequence of industrial injuries.

28 36. At all relevant times, Defendants paid taxes in a manner consistent with Plaintiffs'

1 misclassification as independent contractors. As a consequence, Plaintiffs were required
2 to pay increased state and federal taxes at the rate of independent contractors despite the
3 fact they were employees.

4 37. In misclassifying Plaintiffs as independent contractors and failing to pay Plaintiffs
5 wages and compensation due to them, as well as by committing the numerous other
6 violations detailed below, Defendants, by and through their officers, directors and/or
7 managing agents, acted with malice, oppression and or conscious disregard for the
8 statutory and/or other rights of Plaintiffs, and committed fraud by wrongly treating
9 Plaintiffs as independent contractors and not employees.

10 **FIRST CAUSE OF ACTION**
11 **UNPAID WAGES**
12 **(Violation Of Labor Code § 216)**

13 38. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if
14 set forth in detail herein.

15 39. Defendants, and each of them, have violated and continue to violate Labor Code §
16 216 by willfully refusing to pay wages – including the benefits described above – due and
17 payable to Plaintiffs. As more fully set forth above, Plaintiffs are not compensated for
18 non-productive hours worked. Additionally, Plaintiffs work and have worked well in
19 excess of 8 hours a day or 40 hours per week without being appropriately compensated
20 for hours worked in excess of 40 hours per week and/or 8 hours per day. These unpaid
21 hours include overtime that should have been paid.

22 40. Equally, Defendants denied that any wages due for non-productive work and work
23 in excess of 40 hours per week and/or 8 hours per day were due to be paid to Plaintiffs
24 even though each Defendants knew that under any set of circumstances or facts, Plaintiffs
25 were entitled to be paid for each hour that they worked. Defendants have falsely denied
26 and refused and continue to deny falsely and refuse payment for purposes of securing a
27 material economic benefit to themselves and with the intent to annoy, harass, oppress,
28 hinder, and defraud Plaintiffs.

**SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(Violation Of Labor Code §§ 204, 510, 1194 & 1198)**

41. Plaintiffs hereby reallege and incorporate by reference all paragraphs above as if set forth in detail herein.

42. Plaintiffs have been and are expected to regularly work in excess of eight (8) hours per day and/or forty (40) hours per week. Plaintiffs have regularly worked and continue to regularly work in excess of 8 hours per day or 40 hours per week.

43. At all relevant times, Defendants failed to pay Plaintiffs and all persons similarly situated wages when due, as required by Labor Code §§ 204, 510, 1194 & 1198.

44. Such a pattern, practice and uniform administration of a corporate policy designed to deprive employees of compensation, as described herein, is unlawful and creates an entitlement to recovery by the Plaintiffs, in a civil action, for the unpaid balance of the amount of overtime and other compensation, including interest thereon, civil penalties, including, but not limited to, penalties available under Labor Code §§ 210 and 1197.1, reasonable attorneys' fees and costs of suit, as well as the assessment of any other statutory penalties, including waiting time penalties, against Defendants.

**THIRD CAUSE OF ACTION
FAILURE TO PROPERLY REPORT PAY
(Labor Code § 226 & 1174)**

45. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully herein.

46. At all relevant times, Defendants failed to keep accurate records of the hours worked by Plaintiffs in violation of Labor Code §§ 226 & 1174.

47. At all relevant times, Defendants failed to provide Plaintiffs with accurate records of pay indicating the hours worked and/or the wages paid for the hours worked. In addition, based on fraudulent reporting of hours worked and wages paid, inaccurate information regarding state and federal deductions were provided to Plaintiffs.

48. As a result of Defendants' conduct, Plaintiffs are entitled to all monetary and other damages permitted under the Labor Code and any other applicable law, including, but not limited to, civil penalties pursuant to Labor Code §1174.5.

**FOURTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(Violation Of Labor Code §§ 224 & 2802)**

49. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully herein.

50. Throughout their employment, Plaintiffs incurred expenditures or losses related to their employment and in direct consequence of the discharge of their duties as Defendants' employees, or of their obedience to the directions of Defendants.

51. Defendants failed to reimburse or indemnify Plaintiffs for these expenditures or losses. Items and services that Plaintiffs were required to purchase include, but are not limited to gas, automotive insurance, other vehicle maintenance services, parking privileges, smartphones, and smartphone data packages.

52. By the conduct described herein, Defendants have violated the Labor Code.

53. As a result of Defendants' violations, Plaintiffs are entitled to reimbursement of the incurred expenses pursuant to Labor Code §§ 224 and 2802, as well as attorneys' fees and costs and all civil penalties available as a result of such conduct.

**FIFTH CAUSE OF ACTION
CIVIL PENALTIES
(Labor Code § 2699)**

54. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully herein.

55. Plaintiffs have complied with the requirements of Labor Code § 2699.3 and attach herewith as Exhibit 1 a true and correct copy of their letter of November 13, 2014, providing the Division of Labor Standards Enforcement and Defendants with written

1 notice via certified mail of all violations of the Labor Code Plaintiffs allege that are
2 enumerated in Labor Code § 2699.5.

3 56. Pursuant to Labor Code § 2699, all civil penalties otherwise recoverable for
4 violations of the Labor Code which could be assessed and collected by the Labor and
5 Workforce Development Agency, or any of its departments, divisions, commissions,
6 boards, agencies, or employees, for a violation of the Labor Code, may be recovered
7 through a civil action by an aggrieved employee in an action brought on his or her own
8 behalf or on behalf of others similarly situated.

9 57. By the conduct described herein, Defendants have violated the Labor Code.

10 58. As a result of Defendants' violations, Plaintiffs are entitled to all civil penalties
11 available pursuant to the Labor Code, as well as attorneys' fees and costs as authorized by
12 Labor Code § 2699(g).

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14 **SIXTH CAUSE OF ACTION**
15 **UNFAIR, UNLAWFUL, FRAUDULENT BUSINESS PRACTICES**
(Bus. & Prof. Code § 17200, et seq.)

16 59. Plaintiffs reallege and incorporate the above allegations by reference as if set forth
17 fully herein.

18 60. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the
19 Class.

20 61. Defendants have engaged in unfair, unlawful, and fraudulent business practices as
21 set forth above.

22 62. By engaging in the above-described acts and practices, Defendants have committed
23 one or more acts of unfair competition within the meaning of Section 17200. These acts
24 and practices constitute a continuing and ongoing unfair and/or unlawful business activity
25 defined by the UCL, and justify the issuance of an injunction, restitution, and other
26 equitable relief pursuant to the UCL.

27 63. Defendants have unlawfully treated personal shopper and delivery service
28

1 employees as independent contractors for purposes of business-related expenses and
2 wages to avoid payment of overtime wages and other benefits in violation of, inter alia,
3 the Labor Code, the Civil Code, and the applicable IWC Orders. In addition, Defendants
4 have wrongly, illegally, and unfairly failed to compensate Plaintiffs for work-related
5 expenses including but not limited to gas, vehicle maintenance services, car insurance,
6 smartphones, and smartphone data packages.

7 64. The conduct of Defendants is contrary to the public welfare since it transgresses
8 civil statutes of the State of California designed to protect workers from exploitation.

9 65. Defendants' conduct in misclassifying Plaintiffs and failing to pay wages for hours
10 worked, including overtime, was unfair within the meaning of the UCL because it was
11 against established public policy and has been pursued to attain an unjustified monetary
12 advantage for Defendants by creating personal disadvantage and hardship to their
13 employees. As such, Defendants' business practices and acts have been immoral,
14 unethical, oppressive and unscrupulous.

15 66. The injury to Plaintiffs as a result of Defendants' conduct is far greater than any
16 alleged countervailing benefit.

17 67. By and through its unfair and/or unlawful business practices and acts described
18 herein, Defendants have obtained valuable services from Plaintiffs and have deprived
19 Plaintiffs of valuable rights and benefits guaranteed by law, all to their detriment.

20 68. Plaintiffs seek an order of this Court awarding restitution, disgorgement, injunctive
21 relief and all other relief allowed under the UCL, including interest and attorneys' fees
22 pursuant to, inter alia, Cal. Code of Civ. Proc. § 1021.5.

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**SEVENTH CAUSE OF ACTION
FRAUD/INTENTIONAL MISREPRESENTATION**

69. Plaintiffs hereby reallege and incorporates by reference all paragraphs above as if set forth in detail herein.

70. Defendants, and each of them, made the representations set forth above, including the specific representation to Plaintiffs that they are not entitled to reimbursement for business-related expenses and therefore not entitled to the benefits or rights conferred by the employment relationship between Plaintiffs and Defendants. These representations were made on an ongoing basis from at least January 1, 2012 to the present time.

71. The representations by Defendants as set forth above were, in fact, false. Defendants, at the time they made the representations set forth above, knew them to be false and intended to, and did, induce Plaintiffs' reliance upon these false representations.

72. Plaintiffs, at the time the aforementioned representations were made, were ignorant of the falsity of the representations and believed them to be true.

73. Plaintiffs reasonably relied upon the truth of the aforementioned statements and representations in entering into and continuing in an employment relationship with Defendants according to the terms established by Defendants. Plaintiffs' reliance was a substantial factor in causing economic harm.

74. As a direct, proximate and foreseeable result of Defendants' misrepresentations and conduct, Plaintiffs have suffered, and will continue to suffer, economic injuries.

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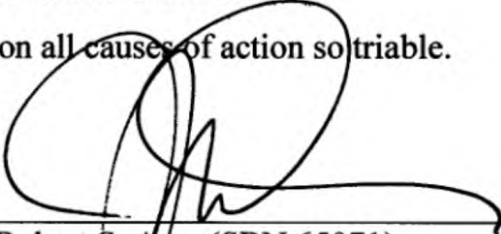
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, pray for judgment against Defendants as follows:

- A. An order certifying this case as a class action and appointing Plaintiff Cobarruviaz and his counsel to represent the Class;
- B. For actual and compensatory damages according to proof pursuant to the Labor Code, applicable IWC Orders and all other applicable laws and regulations;
- C. For restitution and disgorgement to the extent permitted by applicable law;
- D. For an order enjoining Defendants from continuing to engage in the conduct described herein;
- E. For civil and statutory penalties available under applicable law;
- F. For pre-judgment and post-judgment interest;
- G. For an award of attorneys' fees, costs and expenses as authorized by applicable law; and
- H. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.



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November 13, 2014

VIA CERTIFIED MAIL

Labor and Workforce Development Agency
 Division of Labor Standards Enforcement - Department of Industrial Relations
 800 Capitol Mall, Suite 5000
 Sacramento, CA 95814

**Re: Labor Code § 2699.3 Notice of Violations
 Cobarruviaz v. Maplebear, Inc., dba Instacart**

Dear Sir/Madam:

This correspondence is intended to provide notice pursuant to California Labor Code ("Labor Code") § 2699.3, of the intent of Dominic Cobarruviaz, individually and on behalf of all other similarly situated employees of Instacart ("Plaintiffs" or "the Class"), to seek, in addition to all other remedies available at law, certain civil penalties under the Labor Code in connection with alleged violations thereunder by their employer, Maplebear, Inc., doing business as Instacart ("Defendant").

Summary of alleged Labor Code violations (as required by Labor Code § 2699.5):

§ 203	§ 226	§ 1194
§ 204	§ 226.7	§ 1197.1
§ 206.5	§ 510	§ 1198
§ 216	§ 512	§ 2802
§ 224	§ 1174	

Background

Plaintiffs are drivers and delivery persons who Plaintiffs allege were improperly paid

PLEASE RESPOND TO CALIFORNIA OFFICE

NEVADA OFFICE:
 801 RIVERSIDE DRIVE
 RENO, NV 89503

while in the employ of Defendant, thereby resulting in the wrongful denial of overtime compensation, compensation for meal periods and rest breaks and reimbursement for expenses related to their employment. During the course of their employment by Defendant, Plaintiffs allege that they were routinely required to work in excess of eight hours a day and/or forty hours per week without receiving overtime compensation. In addition, Plaintiffs allege they were not provided with legally required thirty minute meal breaks or ten minute rest breaks and, likewise, incurred expenses related to their employment, including expenses for their vehicles, gas, liability insurance, and other mileage-related driving expenses, as well as expenses for their smartphones and supporting data service plans for which they were not reimbursed.

Violations of The Labor Code

Based on, *inter alia*, the foregoing, class members allege that Defendant violated numerous provisions of the Labor Code, as follows:

1. Failure To Pay Overtime Wages

Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work, including any overtime. Labor Code § 510 defines a day's work as 8 hours and states that any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one work week must be compensated at the rate of no less than one and one-half times the regular rate of pay. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission ("IWC") or under conditions prohibited by IWC Orders. IWC Orders No. 16, which apply to the class members employment, provide for payment of overtime wages equal to one and one-half times an employee's regular rate of pay for all hours worked in excess of 8 hours in a day or 40 hours in a work week or, in certain circumstances, two times an employee's regular rate of pay. Moreover, under Labor Code § 203, Defendant had a separate obligation to pay all wages accrued by employees who were discharged from, or quit, employment. As a result of Defendant's failure to pay overtime wages in violation of these sections of the Labor Code, in addition to other remedies, Plaintiffs will seek to recover all civil penalties available for these violations including, but not limited to, penalties available under Labor Code §§ 203, 210, 1194, and 1197.1.

2. Failure To Pay Wages For Meal Periods And Rest Periods

Labor Code § 512 provides, in pertinent part:

- (a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.... An employer may not employ an employee for a work period of more than 10 hours per day without providing the
-

employee with a second meal period of not less than 30 minutes....

Labor Code § 226.7 provides as follows:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Industrial Welfare Commission Wage Order No. 16, §§ 11 and 12, respectively, provide in pertinent parts:

11. Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes [...].

[...]

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

12. Rest Periods

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

[...]

If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of each work day that the rest period is not provided.

Plaintiffs allege that class members were not provided meal and/or rest periods as required by California Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Wage Order No. 16, or otherwise compensated for missed rest and/or meal periods. As such, Plaintiffs assert that Defendant's conduct violated the Labor Code, including, but not limited to, Labor Code §§ 558, 1197.1, and Plaintiffs will seek to recover all civil penalties available under the Labor Code for these violations.

3. Failure To Reimburse For Expenses

Plaintiffs allege that, throughout their employment, class members incurred expenses related to their employment for which they were not reimbursed and that such conduct violated, *inter alia*, Labor Code § 224 and 2802. As such, Plaintiffs will seek to recover all civil penalties available under the Labor Code for these violations.

4. Failure to Properly Report Pay

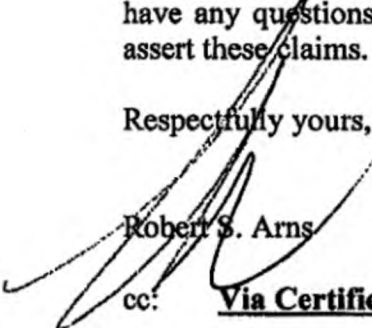
Plaintiffs allege that Defendant did not provide accurate pay stubs indicating the hours worked and/or the wages paid for the hours worked. In addition, based on fraudulent reporting of hours worked and wages paid, inaccurate information regarding state and federal deductions were provided to employees. This failure is in violation of Labor Code §§ 226 & 1174.

5. Requiring Submission Of A Waiver And Release Of Lien

Plaintiffs allege that Defendant violated Labor Code § 206.5 by requiring that class members submit statements in order to receive payment for work. Plaintiffs were purportedly required to affirm that they had been paid in full for all labor, services and material, even though they regularly worked well in excess of 8 hours per day or 40 hours per week, and were entitled to significant additional compensation. Plaintiffs allege that Defendant's conduct in requiring the class members to sign the waiver violated the Labor Code and Plaintiffs will seek to recover all civil penalties available under the Labor Code for these violations.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions regarding Plaintiffs' allegations and/or their intent to seek leave to assert these claims.


Respectfully yours,


Robert S. Arns

cc: Via Certified Mail

Maplebear, Inc. dba Instacart
92 S. Park Street
San Francisco, CA 94107

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jonathan E. Davis SBN: 191346 ARNS LAW FIRM 515 Folsom Street, 3rd Floor, San Francisco, SAN FRANCISCO, CA 94105 TELEPHONE NO.: 415-495-7800 FAX NO.: 415-495-7888 ATTORNEY FOR (Name): Dominic Cobarruviaz		FILED Superior Court of California County of San Francisco JAN 04 2015 CLERK OF THE COURT Superior Court of California County of San Francisco BY:  DEPUTY CLERK	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: Civic Center Courthouse			
CASE NAME: Cobarruviaz, et al. v. Maplear, Inc, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CGC - 15 - 543583 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	d. <input checked="" type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
---	---

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Seven

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 7, 2015

Jonathan E. Davis

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JUN-10-2015
TIME: 10:30AM
PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.10. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.

SUM-100

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT: MAPLEBEAR, INC. dba INSTACART; AND
(AVISO AL DEMANDADO): DOES 1 THROUGH 100, inclusive**

**YOU ARE BEING SUED BY PLAINTIFF: DOMINIC COBARRUVIAZ,
(LO ESTÁ DEMANDANDO EL DEMANDANTE): Individually and On Behalf of
All Others Similarly Situated Employees,**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, California 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Jonathan E. Davis

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ARNS LAW FIRM

515 Folsom Street, 3rd Floor, San Francisco, SAN FRANCISCO, CA 94105

DATE:

(Fecha)

JAN 09 2015

CLERK OF THE COURT

Clerk, by

(Secretario)

M.A. MORAN 415-495-7800

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

Page 1 of 1

Attorney or Party without Attorney: JONATHAN E. DAVIS, SBN 191346 THE ARNS LAW FIRM 515 FOLSOM ST., 3RD FLOOR SAN FRANCISCO, CA 94105 Telephone No: 415 495-7800 FAX No: 415 495-7888		Ref. No. or File No.:	
Attorney for: Plaintiff		ELECTRONICALLY FILED Superior Court of California, County of San Francisco JAN 27 2015 Clerk of the Court BY: CAROL BALISTRERI Deputy Clerk	
Insert name of Court, and Judicial District and Branch Court: Superior Court Of The State Of California, County Of San Francisco			
Plaintiff: DOMINIC COBARRUVIAZ, etc. Defendant: MAPLEBEAR, INC., dba INSTACART; et al.			
PROOF OF SERVICE SUMMONS		Hearing Date:	Time:
		Dept/Divc:	Case Number: CGC-15-543583

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; CLASS ACTION COMPLAINT FOR DAMAGES [C.C.P. § 382] AND DEMAND FOR JURY TRIAL; NOTICE TO PLAINTIFF; ALTERNATIVE DISPUTE RESOLUTION PROGRAM INFORMATION PACKAGE; EXPEDITED JURY TRIAL INFORMATION SHEET.
3. a. Party served: MAPLEBEAR, INC. dba INSTACART
4. Address where the party was served: 420 BRYANT STREET
SAN FRANCISCO, CA 94107
5. I served the party:
 b. by substituted service. On: Thu., Jan. 15, 2015 at: 10:00AM by leaving the copies with or in the presence of:
 JASON YUNN, MANAGER.
 (1) (Business) a Person in charge at least 18 years of age apparently in charge of the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
 (4) A declaration of mailing is attached.
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 on behalf of: MAPLEBEAR, INC.
 Under CCP 416.10 (corporation)
 Other: dba INSTACART
7. Person Who Served Papers:
 a. Andy Esquer

Recoverable Cost Per CCP 1033.5(a)(4)(B)

d. The Fee for Service was:

- e. I am: (3) registered California process server
 (i) Independent Contractor
 (ii) Registration No.: 2013-0001009
 (iii) County: San Francisco



1138 Howard Street
 San Francisco, CA 94103
 Telephone (415) 626-3111
 Fax (415) 626-1331
 www.firstlegallnetwork.com

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Tue, Jan. 20, 2015

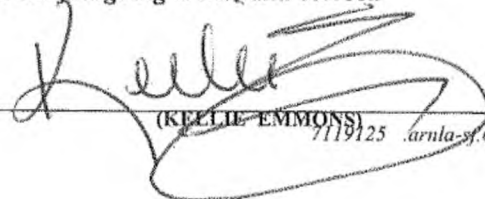
Attorney or Party without Attorney: JONATHAN E. DAVIS, SBN 191346 THE ARNS LAW FIRM 515 FOLSOM ST., 3RD FLOOR SAN FRANCISCO, CA 94105 Telephone No: 415 495-7800 FAX No: 415 495-7888				For Court Use Only	
Attorney for: Plaintiff			Ref. No or File No.:		
Insert name of Court, and Judicial District and Branch Court: Superior Court Of The State Of California, County Of San Francisco					
Plaintiff: DOMINIC COBARRUVIAZ, etc. Defendant: MAPLEBEAR, INC., dba INSTACART; et al.					
PROOF OF SERVICE By Mail		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-15-543583

- I am over the age of 18 and not a party to this action. I am employed in the county where the mailing occurred.
- I served copies of the SUMMONS; CLASS ACTION COMPLAINT FOR DAMAGES [C.C.P. § 382] AND DEMAND FOR JURY TRIAL; NOTICE TO PLAINTIFF; ALTERNATIVE DISPUTE RESOLUTION PROGRAM INFORMATION PACKAGE; EXPEDITED JURY TRIAL INFORMATION SHEET.
- By placing a true copy of each document in the United States mail, in a sealed envelope by **First Class** mail with postage prepaid as follows:
 - Date of Mailing: Tue., Jan. 20, 2015
 - Place of Mailing: SAN FRANCISCO, CA 94103
 - Addressed as follows: MAPLEBEAR, INC. dba INSTACART
420 BRYANT STREET
SAN FRANCISCO, CA 94107
- I am readily familiar with the business practice for collection and processing of correspondence as deposited with the U.S. Postal Service on Tue., Jan. 20, 2015 in the ordinary course of business.
- Person Serving:
 - KELLIE EMMONS
 - FIRST LEGAL SUPPORT SERVICES
1138 HOWARD ST.
SAN FRANCISCO, CA 94103
 - 415-626-3111

Recoverable Cost Per CCP 1033.5(a)(4)(B)
 d. **The Fee for Service** was:
 e. I am: Not a Registered California Process Server

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Tue, Jan. 20, 2015


 (KELLIE EMMONS)
 7/19/25 arnla-sf 673522

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Shon Morgan (Bar No. 187736)

shonmorgan@quinnemanuel.com

Viola Trebicka (Bar No. 269526)

violatrebicka@quinnemanuel.com

Matthew Hosen (Bar No. 291631)

matthosen@quinnemanuel.com

865 South Figueroa Street, 10th Floor

Los Angeles, California 90017-2543

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

7 Attorneys for Defendant Maplebear, Inc., dba
8 Instacart

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11
12 DOMINIC COBARRUVIAZ, Individually
13 and On Behalf of All Others Similarly
14 Situated Employees,

15 Plaintiffs,

16 vs.

17 MAPLEBEAR, INC., dba INSTACART;
18 AND DOES 1 THROUGH 100, inclusive,

19 Defendants.

CASE NO. CGC-15-543583

**DEFENDANT INSTACART'S
ANSWER TO PLAINTIFF DOMINIC
COBARRUVIAZ'S COMPLAINT**

Filing Date: January 9, 2015

Trial Date: None Set

Department: 610

20 Defendant Maplebear, Inc. dba Instacart ("Instacart" or "Defendant") hereby
21 answers the unverified Complaint ("Complaint") on file herein as follows:

22 Pursuant to the provisions of Cal. Civ. Proc. Code §431.30(d), Defendant
23 denies generally and specifically, each and every allegation contained in the Complaint.
24 Defendant further denies that Plaintiff has been damaged in any sum, or at all, by reason of
25 any act or omission on the part of Defendant or on the part of any of its agents, servants,
26 representatives or employees.
27
28

1 Defendant sets forth the following affirmative defenses. In asserting these
2 affirmative defenses, Defendant is not assuming the burden to establish any fact or
3 proposition where that burden is properly imposed on Plaintiff. Defendant reserves the
4 right to assert additional affirmative defenses based on facts that are revealed during
5 discovery.

6
7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

9
10 1. The Complaint, and each purported cause of action alleged therein,
11 fails to state facts sufficient to constitute any cause of action against Defendant.

12
13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Lack of Standing)**

15
16 2. Plaintiff and/or any putative class or representative action member's
17 claims are barred, in whole or in part, because Plaintiff and/or any putative class or
18 representative action member lacks standing to assert any or all of the causes of action
19 alleged in the Complaint and lacks standing to recover on behalf of the putative
20 representative action members.

21
22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Equitable Defenses)**

24
25 3. The Complaint, and the purported causes of action alleged therein, is
26 barred by the equitable doctrines of estoppel, waiver, laches and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

4. Plaintiff and/or any putative class or representative action member has failed to take reasonable, necessary, appropriate and feasible steps to mitigate their alleged damages, and to the extent of such failure to mitigate, Plaintiff and/or any putative class or representative action member should be barred from recovering some or all of the alleged damages they seek.

FIFTH AFFIRMATIVE DEFENSE

(Waiver and Release)

5. The Complaint, and the purported causes of action alleged therein, are barred to the extent Plaintiff and/or any putative class or representative action member has waived, released, relinquished or abandoned any claim for relief against Defendant with respect to the matters which are the subject of the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Defendant's Practices Not Unlawful)

6. Defendant alleges that, to the extent Plaintiff and/or any putative class or representative action member proves Defendant conducted any of the activities alleged in the Complaint, those activities conformed with and were pursuant to any and all applicable statutes and regulations and were not unlawful.

SEVENTH AFFIRMATIVE DEFENSE

(No Injury Or Damage)

7. Defendant denies that Plaintiff and/or any putative class or representative action member has suffered any injury or damage whatsoever, and further deny they are liable to Plaintiff and/or to any putative class or representative action member for any of the injury or damage claimed or for any injury or damage whatsoever.

EIGHTH AFFIRMATIVE DEFENSE

(Ratification)

8. The alleged causes of action are barred, in whole or in part, because of ratification, agreement, assent, acquiescence or consent to Defendant's alleged conduct.

NINTH AFFIRMATIVE DEFENSE

(Justified and Privileged Conduct)

9. The alleged causes of action are barred because Defendant's conduct was at all times justified and privileged, and did not result in any wrongful benefit or unjust enrichment to Defendant.

TENTH AFFIRMATIVE DEFENSE

(Incompetence of Plaintiff)

10. This action is not brought by a competent Plaintiff for the benefit of the allegedly aggrieved and/or injured persons.

ELEVENTH AFFIRMATIVE DEFENSE

(Inadequate Representative)

11. The Complaint fails to the extent it asserts a class or representative action because Plaintiff is not an adequate representative of the class or representative action members.

TWELFTH AFFIRMATIVE DEFENSE

(No Ascertainable Representative Group)

12. The putative class or representative group that Plaintiff purports to represent, the existence of which is expressly denied, is not ascertainable and thus no well-defined community of interest exists among the purported class or representative action members.

THIRTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

13. Plaintiff and/or any putative class or representative action member's claims are barred in whole or in part by the applicable statute of limitations.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Restitutionary Damages)

14. To the extent Plaintiff and/or any putative representative action member seeks restitutionary damages under Private Attorneys General Act ("PAGA"), PAGA bars Plaintiff and/or any putative representative action member from seeking such restitutionary damages.

FIFTEENTH AFFIRMATIVE DEFENSE

(Excessive Fines)

15. The fines sought by Plaintiff and/or any putative representative action member under PAGA are excessive and violate Defendant's due process rights under the United States and California Constitutions.

SIXTEENTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

16. The claims of some of the putative class or representative action members defined in the Complaint are barred in whole or in part by the principles of accord and satisfaction, and payment.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Federal Preemption)

17. Plaintiff and/or any putative class or representative action member's claims are barred in whole or in part insofar as they allege conduct or seek remedies that are governed or regulated by federal law.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Due Process)

18. Permitting this action to proceed as a class or representative action is an unconstitutional denial of Defendant's rights to due process under the Fourteenth Amendment to the United States Constitution and the California Constitution.

NINETEENTH AFFIRMATIVE DEFENSE

(Class Action Inappropriate)

19. With respect to each and every allegation of the Complaint as they relate to the request for class certification, class certification is not appropriate because there is a lack of:

- (a) commonality or community of interest;
- (b) typicality;
- (c) an ascertainable class;
- (d) adequate representation;
- (e) appropriateness of relief to the putative class as a whole;
- (f) predominance of common questions over questions affecting individual class members;
- (g) substantial benefit to the litigants and the Court; and
- (h) superiority of a class action to other available methods for fair and efficient adjudication.

TWENTIETH AFFIRMATIVE DEFENSE

(Failure to Exhaust Contractual Dispute Resolution Procedures)

20. The Complaint and each purported cause of action alleged therein are barred, in whole or in part, because Plaintiff failed to exhaust contractual dispute resolution procedures including, but not limited to, arbitration.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Good Faith)**

3
4 21. The claims of Plaintiff and those of the putative members of the
5 purported class and representative group defined in the Complaint are barred in whole or in
6 part by Defendant's good faith and/or good faith legal defense.

7
8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 **(Adequate Remedy at Law)**

10
11 22. The claims of Plaintiff and those of the putative members of the
12 purported class and representative group defined in the Complaint brought pursuant to
13 California Business and Professions Code Section 17200 are barred in whole or in part in
14 light of the fact that Plaintiffs have an adequate remedy at law.

15
16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 **(Statute of Frauds)**

18
19 23. Plaintiffs' Complaint, and each cause of action therein, is barred by
20 the provisions of California Civil Code § 1624.

21
22 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

23 **(No Injury by Wage Statement)**

24
25 24. The Plaintiff's claims pursuant to Cal. Lab. Code § 226 are barred to
26 the extent Plaintiff and/or putative class and representative action members were not
27 injured by such wage statements.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Contractual Indemnity)

25. Pursuant to a contractual indemnity clause, Defendant is entitled to a right of indemnity against Plaintiff and any individual class or representative action members.

WHEREFORE, Defendant prays for a judgment as follows:

1. That Plaintiff and/or any putative class or representative action member take nothing by reason of the Complaint;

2. That judgment be entered in favor of Defendant and against Plaintiff and/or any putative class or representative action member;

3. That the Complaint be dismissed with prejudice;

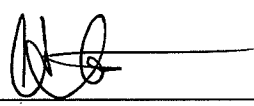
4. That Defendant be awarded its costs of suit, including reasonable attorneys' fees; and

5. For such other relief as this Court deems just and proper.

DATED: February 12, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

Bv


Shon Morgan
Viola Trebicka
Matthew Hosen
Attorneys for Defendant Instacart

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543.

On February 12, 2015, I served true copies of the following document(s) described as **DEFENDANT INSTACART'S ANSWER TO PLAINTIFF DOMINIC COBARRUVIAZ'S COMPLAINT** on the interested parties in this action as follows:


The Arns Law Firm
A Professional Corporation
515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
emails:
Robert Stephen Arns
rsa@arnslaw.com
Jonathan E. Davis
jed@arnslaw.com

*Counsel for Plaintiff Dominic
Cobarruviaz*

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Matt Hosen

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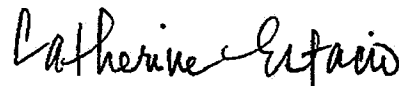
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Case Name: Cobarruviaz, Dominic vs Maplebear Inc et al
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Defendant Instacart's Answer to Plaintiff Dominic Cobarruviaz's Complaint (11 pages)
Authorized Date/Time: Feb 12 2015 3:40PM PST
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